

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EON CORP. IP HOLDINGS, LLC,	§	
	§	
Plaintiff,	§	
	§	Civil Action File No. 6:10-cv-00379-LED
vs.	§	
	§	JURY TRIAL REQUESTED
T-MOBILE USA, INC., et al.,	§	
	§	
Defendants.	§	

**NOTICE REGARDING STATUS OF CERTAIN RETAIL DEFENDANTS' MOTION TO
DISMISS AND PLAINTIFF'S THIRD AMENDED COMPLAINT**

Defendants Amazon.com, Inc., Best Buy Co., Inc., Costco Wholesale Corporation, RadioShack Corporation and Sears, Roebuck and Co. (collectively, the "Retail Defendants") moved the Court to dismiss Plaintiff EON Corp. IP Holdings, LLC's ("EON") Second Amended Complaint on October 29, 2010. (*See* Retail Defendants' Motion To Dismiss For Failure To State A Claim ("Motion to Dismiss"), D.I. 118). EON failed to file a timely opposition to the Retail Defendants' Motion to Dismiss that was due on November 15, 2010.¹

However, on November 18, 2010, EON filed (1) a third "Amended Complaint" in which EON amended its pleadings against the Retail Defendants (*see* D.I. 156) and (2) its untimely Opposition To Defendants' Motions To Dismiss. (*See* D.I. 157). Although EON did not seek leave to file its third Amended Complaint as required by Federal Rule of Civil Procedure 15(a), the Retail Defendants understand that this Court's standard docket control order would allow parties to amend (without leave) their pleadings for some period of time after the initial case

¹ The ECF notice for the Motion to Dismiss, attached as Exhibit A, confirms a filing/service time of 4:01 PM CDT on October 29, 2010. Accordingly, EON's response to the Motion to Dismiss was due on November 15, 2010. *See* Local Rules CV-5(a)(3)(C), 6(a) and 7(e). EON similarly failed to timely respond (*i.e.*, by November 22, 2010) to the counterclaims filed by T-Mobile USA, Inc. that were filed at 3:37 PM CDT on October 29, 2010.

management conference. In light of the foregoing, the Retail Defendants understand that: (1) the third Amended Complaint is the operative complaint against them in this case, and (2) the third Amended Complaint renders their Motion to Dismiss the Second Amended Complaint moot because the latest filed complaint supersedes the Second Amended Complaint. Accordingly, the Retail Defendants notify the Court that they will not file a reply brief in further support of their Motion to Dismiss, and instead shall respond to the third Amended Complaint in the time period provided by the Local Rules and Federal Rules of Civil Procedure.

Respectfully submitted, this 29th day of November, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 29, 2010. Any other counsel of record will be served by first class mail on this same date.

/s/ Wesley W Yuan

Wesley W. Yuan